

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

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MARIAN ORR, D.O.,

Plaintiff,

VS.

NEVADA STATE BOARD OF OSTEOPATHIC  
MEDICINE, *et al.*,

## Defendants.

Case No. 2:12-cv-2119-GMN-VCF

## **ORDER**

This matter involves Plaintiff Marian Orr's civil rights action against, *inter alia*, the Nevada State Board of Osteopathic Medicine (hereinafter "the Board"). Before the court is the Board's Motion for Attorney's Fees (#40). Orr filed an opposition (#43); and the Board replied (#44). For the reasons stated below, Orr's motion is denied without prejudice.

## LEGAL STANDARD

Federal Rule of Civil Procedure 54(d) provides that a prevailing party is entitled to costs unless the court rules otherwise. In certain circumstances prevailing defendants in a section 1983 action, like the Board, may be awarded their attorney's fees pursuant to 42 U.S.C. § 1988. *See, e.g., Saman v. Robbins*, 173 F.3d 1150, 1157 (9th Cir. 1999). However, an award of attorney's fees to the prevailing defendant is a matter within the court's discretion. *See, e.g., Saman*, 173 F.3d at 1157; *see also Mendez v. Cnty. of San Bernardino*, 540 F.3d 1109 (9th Cir. 2008) (stating that an abuse of discretion occurs if the court fails to apply the proper legal standard or makes findings of fact that are clearly erroneous). Additionally, Rule 54's Advisory Committee Notes state that "[i]f an appeal on the merits of the case is taken, the court may . . . defer its ruling on the motion, or may deny the motion without prejudice."

## DISCUSSION

The Board’s Motion for Attorney’s fees is denied without prejudice. On July 25, 2014, judgment was entered in favor of the Board. (Doc. #35). Orr subsequently filed a notice of appeal, (*see* Doc. #36), followed by the Board’s motion for attorney’s fees (*see* Doc. #40). Federal Rule of Civil Procedure 1 instructs the court to administer the rules “to secure the just, speedy, and inexpensive determination of every action and proceeding.” Rule 54 affects Rule 1’s goals by permitting the court to defer ruling on motions for attorney’s fee until an appeal is decided. *See* Fed. R. Civ. P. 54(d), Advisory Comm. Notes (1993). In light of the fact that Orr’s appeal could moot the Board’s motion for attorney’s fees, the court exercises its discretion in favor of denying the motion without prejudice.

ACCORDINGLY, and for good cause shown,

IT IS ORDERED that the Board's Motion for Attorney's Fees (#40) is DENIED without prejudice.

IT IS FURTHER ORDERED that the Board is granted LEAVE to refile the motion after the Ninth Circuit resolves Orr's appeal.

IT IS SO ORDERED.

DATED this 5th day of September, 2014.

Cam Ferenbach  
CAM FERENBACH  
UNITED STATES MAGISTRATE JUDGE